Medoc Trading Pte Ltd v Vijay Kumar Natarajan & Ors

HIGH COURT (KUALA LUMPUR) — ORIGINATING PETITION NO 17–05 OF 1994
AZMEL J
19 MAY 1999

Legal Profession *— Retainer — Authority — Want of — Solicitors filed action on petitioners' behalf in absence of board of directors' resolution authorizing them — Who should bear costs of action*

The respondents had issued a bill to the petitioners in February 1994 amounting to RM500,000 as agreed fee for the services they had rendered. An action disputing this said fee was filed in March 1994 by M/s Shearn Delamore & Co purportedly acting on behalf of the petitioners. In the course of the hearing, the respondents had applied by way of summons-in-chambers asking M/s Shearn Delamore & Co to produce proof by way of a resolution of the petitioners' board of directors that they had been authorized to act on the petitioners' behalf. M/s Shearn Delamore & Co then wrote to the petitioners asking them to furnish a copy of such a resolution but received no response from the petitioners.

Subsequently, M/s Shearn Delamore & Co applied to the court for a declaration that they were no longer acting on behalf of the petitioners, which application was granted. Following this, in response to an application by the respondents, the court ordered the costs of the action to be borne and paid by M/s Shearn Delamore & Co. M/s Shearn Delamore & Co appealed.

Held:

On the basis of the non-response by the petitioners to the letter of M/s Shearn Delamore & Co and coupled with their application to be discharged from representing the petitioners, it can be conclusively assumed that they never had the authority to act for the petitioners from the very beginning of this action. The costs of this action should be borne by M/s Shearn Delamore & Co themselves (see p 292A–B).

[Bahasa Malaysia summary

Responden telah mengeluarkan bil kepada pempetisyen-pempetusyen pada Februari 1994 berjumlah RM500,000 sebagai fee yang dipersetujui untuk perkhidmatan yang mereka berikan. Suatu tindakan untuk mempertikaikan fee ini telah difailkan pada Mac 1994 oleh Tetuan Shearn Delamore & Co yang bertindak bagi pihak pempetisyen-pempetisyen. Di dalam perjalanan perbicaraan, responden-responden telah memohon melalui saman-dalam-kamar meminta Tetuan Shearn Delamore untuk mengemukakan bukti melalui resolusi ahli lembaga pengarah pempetisyen bahawa mereka

telah diberi kuasa untuk bertindak bagi pihak pempetisyen. Kemudian Tetuan Shearn Delamore & Co telah menulis kepada pempetisyen-pempetisyen meminta mereka untuk mengemukakan salinan resolusi tersebut tetapi tidak mendapat apa-apa balasan daripada pempetisyen-pempetisyen.

Kemudian Tetuan Shearn Delamore & Co telah memohon kepada mahkamah untuk suatu deklarasi bahawa mereka tidak lagi bertindak bagi pihak pempetisyen-pempetisyen, di mana permohonan tersebut telah dibenarkan. Berikutan ini, sebagai tindak balas kepada permohoanan oleh respondent-responden, mahkamah telah mengarah kos tindakan tersebut ditanggung dan dibayar oleh Tetuan Shearn Delamore & Co. Tetuan Shearn Delamore & Co telah merayu.

Diputuskan:

Atas dasar tiada balasan dari pempetisyen-pempetisyen kepada surat Tetuan Shearn Delamore & Co dan juga ditambah dengan permohonan untuk dilepaskan daripada mewakili pempetisyen-pempetisyen, ia boleh dianggap secara konklusif bahawa mereka tidak mempunyai kuasa untuk bertindak bagi pempetisyen-pempetisyen dari permulaan tindakan ini. Kos untuk tindakan ini sepatutnya ditanggung oleh Tetuan Shearn Delamore sendiri (lihat ms 292A–B).]

Notes

For a case on want of authority of retainer, see 9 *Mallal's Digest* (4th Ed, 1995 Reissue) para 1688–1689.

Cases referred to

Yonge v Toynbee [1910] 1 KB 215 (refd)
Simmons v Liberal Opinion Ltd; Re Dunn [1911] 1 KB 966 (refd)

Legislation referred to

Rules of the High Court 1980 O59 r 8

SC Chan (*Kumar Jaspal Quah & Aishah*) for the respondent.
Maidzuara Mohammed (*Shearn Delamore & Co*) for the petitioner.

Azmel J: This is an appeal brought by M/s Shearn Delamore & Co against my decision dated 30 May 1996, ordering the said legal firm to bear the costs of this action. This action by the petitioners was filed by M/s Shearn Delamore & Co purportedly acting on behalf of Medoc Trading Pte Ltd, the petitioners. According to the petition, the petitioners had earlier on engaged M/s Kumar Jaspal Quah & Aishah to represent them in connection with a Kuala Lumpur High Court Suit No C23-2384-86. However sometime in December 1993 the legal representation of the suit was taken

over by M/s Shearn Delamore & Co. For the services that they had rendered, M/s Kumar Jaspal Quah & Aishah issued a Bill No 4166 dated 22 February 1994 to the petitioner. In the said bill, M/s Kumar Jaspal Quah & Aishah (respondents) claimed a legal fee for the trial of the suit amounting to RM500,000 as agreed fee. This had been disputed by the petitioners. This action was filed by M/s Shearn Delamore & Co in respect of the dispute over the said agreed fee in the said bill issued by the respondents. It was filed on 19 March 1994.

In the course of the hearing of this petition the respondents had applied by way of summons-in-chambers (encl 12) asking M/s Shearn Delamore & Co, appearing on behalf of the petitioners, to produce proof by way of a resolution of the petitioners' board of directors that they had authorized M/s Shearn Delamore & Co to act on their behalf in this petition within fourteen (14) days from the date of the court order. The respondents had made this request to M/s Shearn Delamore & Co vide a letter dated 21 March 1995. Following such request M/s Shearn Delamore & Co wrote a letter dated 10 April 1995 to the petitioners asking them to furnish a copy of the resolution of the board of directors of the petitioners authorizing them to act as their solicitors. But there was no response from the petitioners and no such resolution was forthcoming.

Hence on 29 June 1996 M/s Shearn Delamore & Co applied to the court for a declaration (encl 14) that they were no longer acting on behalf of the petitioners. The reason for the application is contained in the supporting affidavit of Cik Maidzuara Mohammed dated 30 January 1996 which says:

> Saya ingin memaklumkan mahkamah mulia ini bagi sehingga pemfailan permohonan ini, firma saya masih tidak menerima sebarang jawapan daripada syarikat pempetisyen.

In the supporting affidavit, the letter dated 10 April 1995 by M/s Shearn Delamore & Co to the petitioners asking them to forward to them a copy of the petitioners' board resolution authorizing M/s Shearn Delamore & Co to act on their behalf in this action was attached. But the resolution was not forthcoming. It was clear to me that on the facts of this application, M/s Shearn Delamore & Co lacked any authority to act on behalf of the petitioners to bring this action. As such the application by M/s Shearn Delamore & Co was granted by me on 29 February 1996.

Subsequent to this, the respondents applied by way of summons-in-chambers (encl 19) seeking, among other prayers, to have the costs of this action taxed by the court and borne and paid by M/s Shearn Delamore & Co to the respondents. At the hearing of this application it was strenuously argued by Cik Maidzuara Mohammed of M/s Shearn Delamore & Co that the costs of this action should be borne by the petitioners themselves. M/s Shearn Delamore & Co should not be ordered to pay the costs.

Having considered this matter carefully I was of the view that the costs of this action should be borne and paid by M/s Shearn Delamore & Co themselves because on their own admission they could not produce any authority from the petitioners' board to commence action against the

respondents. In the absence of a response from the petitioners to the letter sent by M/s Shearn Delamore & Co for a copy of such authority, it would be very difficult for this court to be convinced that they had been authorized to act on behalf of the petitioners. It must be pointed out that in this application by the respondents (encl 19) M/s Shearn Delamore & Co had not filed any affidavit in reply to the supporting affidavit of En Vijay Kumar Natarajan. Thus on the basis of the non-response by the petitioners to the letter of M/s Shearn Delamore & Co and coupled with their application to be discharged from representing the petitioners, it can be conclusively assumed that they never had the authority to act for the petititoners from the very beginning of this action. In support of this I refer to the headnotes of the English Court of Appeal case of *Yonge v Toynbee* [1909] 1 KB 215 which states:

> that the solicitors, who had taken on themselves to act for the defendant in an action they had impliedly warranted that they had authority to do so, and therefore were liable personally to pay the plaintiff's costs of the action.

In another English Court of Appeal case of *Simmons v Liberal Opinion Ltd; Re Dunn* [1911] 1 KB 966, the following is stated in the headnotes:

> A solicitor assuming to act for one of the parties to an action warrants his authority, and is personally liable to the opposing party for costs, if it turns out that the client for whom he assumed to act is non-existing, or has revoked the authority.

In the circumstances of this case it would therefore be highly improper for me to order the petitioners to bear the cost as it was admitted by M/s Shearn Delamore & Co that they did not have the petitioners' Board resolution authorizing them to commence the said action. In my view this is a proper case for me to invoke O 59 r 8 of the Rules of the High Court 1980 to order the solicitors to be personally liable to pay costs of this action. And I so ordered.

Order accordingly.

Reported by Joel Ng